APPENDIX A

ABC, Inc., alone and through its subsidiaries, owns ABC News, the ABC Radio Network, abcnews.com, and local broadcast television and radio stations that regularly gather and report news to the public. ABC produces, among other programs, the news programs *World News Tonight with Peter Jennings*, *20/20* and *Nightline*. ABC received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

Advance Publications, Inc. is a privately held communications company that, directly or through subsidiaries, publishes daily newspapers in over 25 cities and weekly business journals in over 40 cities throughout the United States. It also, directly or through subsidiaries, owns The Conde Nast Publications, Fairchild Publications, Inc., Parade Publications, and the Golf Digest Companies, which together publish over 25 magazines with nationwide circulation.

The Associated Press is a not-for-profit mutual news cooperative. The members of AP are more than 1,500 newspapers and more than 5,000 television and radio stations throughout the United States. AP also serves thousands of subscribing newspapers, news networks and other publishers and distributors of news worldwide. Founded in 1848, AP is now the largest newsgathering organization in the world. AP received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill and AP reporter Josef Hebert has been held in contempt and fined $500 per day for declining to reveal confidential sources of information about Dr. Wen Ho Lee, who is also suing the government for alleged violations of the Privacy Act. Those fines have been stayed pending appeal.

The Association of American Publishers, Inc. is the principal trade association for the U.S. book publishing industry with over 300 members, comprising most of the

major commercial book publishers in the United States, as well as smaller and medium-sized houses, non-profit publishers, university presses and scholarly societies.

Cable News Network LP, LLLP ("CNN") is a subsidiary of Turner Broadcasting System, Inc., a Time Warner company. CNN is the world's largest news organization with over a dozen television and radio news networks and websites available worldwide, as well as several news programming services, which are provided to affiliates domestically and worldwide. CNN employs more than 3,000 news professionals, who gather news throughout the world. Former CNN reporter Pierre Thomas has been held in contempt and fined $500 per day for declining to reveal confidential sources of information about Dr. Wen Ho Lee. Those fines have been stayed pending appeal. CNN also received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

CBS Broadcasting Inc., a wholly owned subsidiary of Viacom Inc., produces and broadcasts news, public affairs, and entertainment programming. CBS News produces morning, evening, and weekend news programming, as well as news and public affair magazine programs such as *60 Minutes* and *48 Hours Investigates*. CBS owns and operates broadcast television stations nationwide and, through another Viacom subsidiary, Infinity Broadcasting Corporation, owns and operates radio stations throughout the country. CBS received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

Dow Jones & Company, Inc. is the publisher of, *inter alia*, *The Wall Street Journal*, a national newspaper published each business day; WSJ.com, a news site on the world wide web with over 700,000 paying subscribers; the Dow Jones Newswires, real-time, 24-hour newswires distributed electronically to subscribers; *Barron's*, a weekly newspaper

of business and finance; and, through Ottaway Newspapers, Inc., its subsidiary, more than twenty daily and weekly newspapers.

DR Partners d/b/a Stephens Media Group is a nationwide newspaper company, which publishes daily and weekly newspapers in eight states from North Carolina to Hawaii, including the *Las Vegas (NV) Review-Journal*, the largest daily newspaper in Nevada.

Gannett Co., Inc. is an international news and information company that publishes 101 daily newspapers in the United States with a combined daily paid circulation of 7.6 million, including *USA TODAY*, which has a circulation of 2.3 million. Gannett publishes a variety of non-daily publications, including *USA Weekend*, a weekly newspaper magazine with a circulation of 22.7 million. Gannett's 21 television stations cover 17.9 percent of the United States. Gannett received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

Gray Television, Inc. is a communications company headquartered in Atlanta, Georgia, which operates 16 CBS-affiliated television stations, eight NBC-affiliated television stations, seven ABC-affiliated television stations and five daily newspapers.

Gruner + Jahr USA Publishing reaches one of the largest readerships in America, selling nearly 200 million magazines each year. Gruner + Jahr USA Publishing's six core titles – *Child*, *Family Circle*, *Fast Company*, *Fitness*, *Inc.* and *Parents* – are leaders in the business, fitness, parents and women's service markets. Beyond its core titles, Gruner + Jahr USA Publishing also reaches consumers through the Parents Media Group, books and licensing, custom publishing and new media divisions.

The Hearst Corporation is a diversified, privately held media company that publishes consumer magazines, business publications and newspapers, including the *Houston Chronicle*, the *San Francisco Chronicle* and the *Seattle Post-Intelligencer*. Hearst also owns a leading features syndicate, has interests in several cable television networks, produces programming for television and is the majority owner of Hearst-Argyle Television, Inc., which owns and operates numerous broadcast stations. Federal prosecutors have requested that the *San Francisco Chronicle* reveal the source of information provided to it regarding the grand jury investigation of the distribution of steroids by the Bay Area Laboratory Cooperative or "BALCO".

Landmark Communications, Inc. is a privately held media company with interests in newspapers, television broadcasting, cable programming and electronic publishing. Its newspapers include *The Virginian-Pilot*, the *Greensboro News & Record*, *The Roanoke Times* and more than one hundred community newspaper and special interest publications. Landmark Communications, Inc. owns television stations in Las Vegas (KLAS-TV) and Nashville (WTVF-TV), as well as the Weather Channel, which produces continuous, 24-hour national, regional and local weather-related programming received by more than 87 million households nationwide.

Magazine Publishers of America ("MPA") is a national trade association including in its present membership more than 240 domestic magazine publishers who publish over 1,400 magazines sold at newsstands and by subscription. MPA members provide broad coverage of domestic and international news in weekly and biweekly publications, and publish weekly, biweekly and monthly publications covering consumer affairs, law, literature, religion, political affairs, science, sports, agriculture, industry and many other interests,

avocations and pastimes of the American people. MPA has a long and distinguished record of activity in defense of the First Amendment.

Media General, Inc. is a diversified communications company operating leading newspapers, television stations and online enterprises, primarily in the Southeastern United States. The company's publishing assets include three metropolitan newspapers, *The Tampa Tribune*, the *Richmond Times-Dispatch*, and the *Winston-Salem Journal*; 22 daily community newspapers in Virginia, North Carolina, Florida, Alabama and South Carolina; and more than 100 weekly newspapers and other publications. The company's broadcasting assets include 26 network-affiliated television stations that reach more than 30 percent of the television households in the Southeast.

The National Newspaper Association ("NNA") is the national voice of community newspapers, representing owners, publishers, and editors of America's community newspapers. The NNA has approximately 3,200 newspaper members.

National Public Radio, Inc. ("NPR") is a District of Columbia non-profit membership corporation. It produces and distributes its radio programming through, and provides trade association services to, nearly 800 public radio member stations located throughout the United States and in many U.S. territories. NPR's award-winning programs include *Morning Edition*, *All Things Considered*, and *Talk of the Nation* and serve a growing broadcast audience of over 23 million Americans weekly. NPR also distributes its broadcast programming online (adding additional reporting and features), to foreign countries through satellite and cable systems worldwide, and to U.S. Military installations via the American Forces Radio and Television Service. NPR

received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

NBC Universal is one of the world's leading media and entertainment companies. Formed in May 2004 through the combining of NBC and Vivendi Universal Entertainment, NBC Universal owns and operates the NBC television network, a Spanish-language network (Telemundo), NBC News, and several news and entertainment networks including MSNBC and CNBC. NBC News produces the *Today* show, *NBC Nightly News with Brian Williams*, *Dateline* and *Meet the Press*. NBC Universal also owns and operates 29 television stations, including WJAR in Rhode Island. WJAR reporter James Taricani recently served a four-month sentence of home confinement for declining to reveal who leaked to him a videotape capturing alleged corruption by local government officials. An NBC News reporter received a subpoena seeking confidential sources issued by the Respondent in this case and CNBC received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

Newsweek, Inc., a wholly owned subsidiary of The Washington Post Company, publishes the weekly news magazines *Newsweek* and *Newsweek International*, which are distributed nationally and internationally, and *Arthur Frommer's Budget Travel* magazine, which is distributed nationally. *Newsweek* received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

Random House, Inc., the world's largest English-language general interest trade book publisher, is a division of Bertelsmann AG, one of the foremost international media companies in the world. Its more than 100 imprints in the U.S. and in sixteen countries globally publish some of the

most influential and popular fiction and nonfiction authors in hardcover, paperback, audio, and digital formats.

Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend First Amendment rights and freedom of information interests of the news media. The Reporters Committee provides representation, guidance, and research in First Amendment litigation. The Reporters Committee was founded in 1970 in response to a wave of government subpoenas directed at journalists.

The Society of Professional Journalists ("SPJ") is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry; works to inspire and educate the next generation of journalists; and protects the First Amendment guarantees of freedom of speech and press.

Tribune Company operates businesses in publishing, broadcasting and on the Internet. It reaches more than 80 percent of U.S. households, and is the only media company with newspapers, television stations and web sites in the nation's top three markets. In publishing, Tribune operates 12 market-leading daily newspapers, including the *Baltimore Sun*, *Newsday*, the *Chicago Tribune*, and the *Los Angeles Times*. In broadcasting, Tribune properties include 26 television stations and Superstation WGN on national cable. Both the *Los Angeles Times* and a former *Baltimore Sun* reporter received subpoenas seeking their confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill and *Los Angeles Times* reporter Bob Drogin has been held in contempt and fined $500 per day for declining to

reveal confidential sources of information about Dr. Wen Ho Lee. Those fines have been stayed pending appeal.

The Washington Post is a leading newspaper with a nationwide daily circulation of over 759,000 and a Sunday circulation of over 1.03 million. *Washington Post* reporter Walter Pincus received a subpoena seeking his confidential sources in the Privacy Act lawsuit instituted by Dr. Wen Ho Lee and two *Post* reporters, including Mr. Pincus, received subpoenas seeking their confidential sources issued by the Respondent in this case. The *Post* also received a subpoena seeking its confidential sources in the Privacy Act lawsuit instituted by Dr. Steven Hatfill.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEN HO LEE, Plaintiff, - against – UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, and UNITED STATES DEPARTMENT OF ENERGY, Defendants.	Civ. A. No. 99-3380 (TPJ)

AFFIDAVIT OF BOB DROGIN

CITY OF WASHINGTON)
) ss.:
DISTRICT OF COLUMBIA)

BOB DROGIN, being duly sworn, states:

1. I submit this affidavit in response to the Court's Order to Show Cause. Except where otherwise stated, I have personal knowledge of the facts herein.

2. I have been a professional journalist for 28 years and have won numerous national awards for my work. Since

1998, I have covered national security, focusing on intelligence, in the Washington bureau of the *Los Angeles Times*. In the past year, my work has been cited in The New Yorker, the New York Review of Books, Columbia Journalism Review and by other news organizations. I was stationed overseas from 1989 to 1997, first as chief of the Manila bureau of the *Los Angeles Times* and then as chief of the paper's Johannesburg bureau. Prior to that, I spent six years as a national correspondent in the paper's New York bureau. I have also worked at the *Philadelphia Inquirer* and at the Charlotte (N.C.) *Observer*, where I helped lead a team of reporters who won the 1981 Pulitzer Prize for Meritorious Public Service for a series entitled "Brown Lung: A Case of Deadly Neglect."

3. Although I prefer to use on-the-record sources, as I believe most journalists do, throughout my career I have relied on confidential sources when necessary to provide important news to my readers, or to provide context for understanding events. Quite simply, I have found that the ability to promise sources confidentiality is often essential to gather and disseminate the news, especially when covering stories about sensitive topics such as foreign affairs, national security, and intelligence.

4. For example, I have relied heavily on confidential sources to cover intelligence and anti-terrorism initiatives since the attacks of Sept. 11, 2001:

a. On Sept. 12, 2001, I contributed to a story that preliminarily identified Osama bin Laden as the mastermind behind the devastating attacks on the World Trade Center and the Pentagon. The story, which contained details of the gathering investigation, relied heavily on well-placed sources within the intelligence community who spoke on the condition that neither I nor my colleagues reveal their identities. This article was published at a time when U.S.

officials were not prepared to assign responsibility for the attacks and when representatives of the Taliban government in Afghanistan were denying any involvement by bin Laden's Al Qaeda network. A copy of this story is attached hereto as Exhibit 1.

b. In the immediate aftermath of the terrorist attacks, confidential sources provided information about the CIA's rapid mobilization efforts with a "virtual blank check" from the Bush Administration, including initiatives to reassign and recall analysts and operatives, rebuild an Afghanistan network that had been largely dismantled following the Soviet withdrawal in 1989, form relationships with ethnic fighters in Afghanistan, and publicize a bounty on Osama bin Laden within Muslim communities. Another story that I co-authored in October 2001 described the extent to which the American intelligence community considered all options available to fight terrorism – including torture, assassination, and targeting civilians. As one confidential source, a former CIA official, told me, "there is a lot of experimentation that's going on." Copies of these stories are attached hereto as Exhibit 2.

c. A June 1, 2002, article that I co-authored reported that the CIA had by then paid tens of millions of dollars to informers in Afghanistan and Pakistan for intelligence about the whereabouts of bin Laden. Details about the cash payouts—which sometimes purchased unreliable or bogus information—came from confidential sources, who spoke on the condition that they not be identified by name. Were my colleague and I not able to promise those sources anonymity, we would not have been able to report fully on the methods being employed in the hunt for bin Laden. Copies of these stories are attached hereto as Exhibit 3.

d. A December 9, 2001 article relied on sources within the U.S. intelligence community to describe the

emerging picture about Al Qaeda terrorist cells in Indonesia, Yemen, and Somalia, as wells as little-noticed U.S. efforts in Bosnia-Herzegovina and the Philippines. Without information provided by these sources, we would not have been able to inform readers fully about the war being waged against terrorism across the globe. A copy of this story is attached hereto as Exhibit 4.

e. In August 2002, at a time when little information was available about the approximately 600 terrorism suspects from 43 countries then in U.S. custody at Guantanamo Bay, confidential intelligence sources revealed that none of the detainees were considered to be Al Qaeda leaders. Rather, the majority of the prisoners were regarded as "low and mid-level" fighters and supporters of the organization. A copy of this story is attached hereto as Exhibit 5.

f. Before ground troops began military action in Iraq, confidential sources provided information on how the Hussein regime's smuggling efforts circumvented U.N. sanctions to purchase military equipment such as night-vision devices, communications gear, and tires for armored personnel carriers. Following the war, a three-month investigation used numerous confidential sources and reviewed more than 800 pages of documents to conclude that this pipeline was broader than previously imagined, and that a Syrian trading company served as the main conduit for Iraq circumvention of the U.N. embargo. Copies of these stories are attached hereto as Exhibit 6.

g. In January 2003, as the United States was building a case for a link between Al Qaeda and Saddam Hussein, confidential sources enabled a colleague and me to report that the Bush Administration's assertion relied on only circumstantial evidence and one Al Qaeda suspect. Indeed, intelligence officials told me that "[t]here isn't a factual basis for such assertions," thus raising serious doubts about one

justification for military action against Iraq. A copy of this story is attached hereto as Exhibit 7.

h. After the war, I reported on the disorganization, delays, and faulty intelligence that plagued searches for weapons of mass destruction, relying on confidential sources to describe the rocky start to weapons inspection. On August 28, 2003, I reported on the failure of U.S. investigators, after reviewing millions of pages of Iraqi government documents, to uncover evidence supporting pre-war claims that Saddam Hussein had secretly acquired chemical and biological weapons. This report relied extensively on sources within the 1,400-member Iraq Survey Group who spoke on the condition that I not disclose their names. Without the cooperation of these sources, I would not have been able to report this important [story]. Copies of these stories are attached as Exhibit 8.

i. On February 20, 2004, I co-wrote a report about the struggles of the CIA's operations in Iraq and Afghanistan. The story exposed many of the problems the agency was confronting in attempting to rebuild its clandestine intelligence service and, specifically, it revealed internal turmoil related to the leadership of the CIA's Baghdad station. The article depended substantially on the cooperation of sources within the agency who spoke on the condition that we not reveal their names. A copy of this story is attached as Exhibit 9.

j. Similarly, confidential sources later provided information fleshing out the intelligence community's faulty reliance on pre-war claims made by an Iraqi defector, later discredited, about Iraq's weapons program. This provided our readers with important information about the evidence supporting pre-war claims by the Bush Administration and Congress to justify U.S. military action in Iraq. Copies of these stories are attached hereto as Exhibit 10.

5. U.S. and foreign government officials often provide context for international political developments and national security issues on condition that they not be identified. Many of these events would not have been reported to my readers – or reported in significantly less detail – without these sources. Some examples from my past reporting include:

a. Information provided by confidential sources within the U.S. intelligence community were central to a Jan. 5, 2003 profile of a metallurgist considered to be the father of Pakistan's nuclear bomb, describing the possible links to nuclear programs in North Korea, Iran, and Iraq. My coverage of U.S. Pakistani political tensions related to Pakistan's nuclear program goes back at least a decade. For example, relying largely on interviews with a "senior Pakistani intelligence official" and with diplomats, all of whom would speak with me only on condition of anonymity, in an April 9, 1993 report I explained to my readers the newly strained relationship between Pakistan and the United States. Without these confidential sources, I would not have been able to provide context for the apparent contradiction of U.S. economic sanctions and threats against Pakistan, at the same time as we continued high-level diplomatic and military visits. Copies of these stories are attached as Exhibit 11.

c. [sic] Confidential sources substantially advanced my reporting on an attempted 1989 military uprising in the Philippines. In a Dec. 12, 1989 story, in particular, such sources revealed that the United States and other Western nations ignored intelligence warnings about a coup attempt that nearly toppled President Corazon Aquino's government. Prior to military action, rebels had sought through back channels Western support for the uprising. This caused the CIA and foreign intelligence agencies to re-examine their procedures. A copy of this story is attached hereto as Exhibit 12.

d. In covering the aftermath of the Gulf War in 1991, I relied significantly on confidential sources, at least in my initial stories, to report on widespread reprisal killings in newly liberated Kuwait. For example, I relied on a "senior Western official" to confirm reports that Kuwaiti military were attacking or detaining Palestinians for a March 14, 1991 article. Copies of these stories are attached hereto as Exhibit 13.

e. On May 10, 1999, I co-wrote a story on the mistaken bombing of the Chinese embassy in Belgrade by a U.S. warplane. Based in part on a confidential source, we reported that officials at the CIA had chosen the target mistakenly and that the target subsequently had been vetted by military strategists, thus revealing a significant deficiency in war-planning procedures. A copy of this story is attached hereto as Exhibit 14.

f. During negotiations between the United States and North Korea over the North Korean nuclear program negotiators, U.S. officials privately explained the status of talks – and information about the extent and purpose of that nation's program – in much greater detail than in official statements. Copies of these stories are attached hereto as Exhibit 15.

g. Similarly, U.S. officials spoke on condition of confidentiality in December 2001 about escalating tensions between India and Pakistan, providing intelligence analysis about the extent of military buildup along the border and the prospects for military action. Without these sources, readers would have had significantly less information about a possible war between two nuclear powers. A copy of this story is attached hereto as Exhibit 16.

6. I was assigned to report about the investigation into allegations that China had obtained U.S. nuclear secrets, including allegations against Wen Ho Lee, because the story

concerned national security issues. My approach to reporting this story, including any use of confidential sources, was consistent with the way I have practiced journalism as a foreign and national security correspondent throughout my career.

7. Based on my personal experience during my many years as a professional journalist, I firmly believe that if sources who would otherwise be willing to speak to me in confidence viewed me as an investigative tool of private litigants, unable to keep their identities confidential as promised, they would, in many cases, not be willing to provide newsworthy information for dissemination to my readers.

/s/

_____

Bob Drogin

Sworn to before me this
30th day of July, 2004

/s/

_____

Notary Public

B9

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEN HO LEE, Plaintiff, - against – UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, and UNITED STATES DEPARTMENT OF ENERGY, Defendants.	)	Civ. A. No. 99-3380 (TPJ)

AFFIDAVIT OF H. JOSEF HEBERT

CITY OF WASHINGTON)
) ss.:
DISTRICT OF COLUMBIA)

H. JOSEF HEBERT, being duly sworn, states:

1. I submit this affidavit in response to the Court's Order to Show Cause. Except where otherwise stated, I have personal knowledge of the facts herein.

2. I have been a reporter for The Associated Press ("A.P.") for 34 years. Prior to joining the A.P., I earned my journalism degree from the University of Missouri in 1967, and worked briefly for United Press International in Kansas

City before serving for two years on active duty in the U.S. Army, including a year in Vietnam as an information officer for an infantry division.

3. After joining the Chicago bureau of the A.P. in 1970, I spent time in the A.P.'s Springfield, Ill., New York, and Concord, N.H., bureaus and was promoted to the flagship A.P. bureau in Washington, D.C., in 1977. For most of the past 27 years, I have been a "beat" reporter focusing on environmental, energy, transportation, and nuclear issues.

4. For example, I was one of the A.P. reporters who reported about the Three Mile Island nuclear accident in 1979 and the ensuing investigation by a presidential commission. In 1981, I covered the air-traffic controllers' strike. I followed airline deregulation and wrote about nearly every major aircraft accident in the 1980s. Beginning around 1990, I began reporting exclusively about environmental, energy, and natural resources issues. In 1997, I covered the climate change negotiations in Kyoto, Japan. On these issues, my beat has included Congress, the White House, and federal agencies such as the Energy Department.

5. Although I am not primarily an investigative reporter, like some of the other reporters subpoenaed in this case, throughout my long career as a Washington journalist I have regularly consulted officials on condition of anonymity. This is part of working a beat and occurs in a variety of contexts.

a. At one end of the spectrum, many parts of the federal government officially sanction "background" briefings, at which federal employees who may not have authority to speak to the press on the record provide information about specific topics on the condition that they not be named, or that they be identified only by specific terms, such as "a senior U.S. official." These briefings allow me and other journalists to inform readers of important news. If I refused to abide by the ground rules of such briefings, the

A.P.'s readers would not have access to the news generated at them.

b. Additionally, other news reporters and I frequently use confidential sources to confirm the accuracy of, or provide context to, breaking news developments. Through such relationships with reliable, confidential government sources, whose supervisors may or may not be aware of their contact with the press, I am able to flesh out official announcements, confirm or debunk other news reports, and play "catch up" in following stories that have been broken elsewhere. Officials typically provide confirmation and context to breaking news only upon being promised confidentiality. As a result, confidential sources make my stories more thorough and accurate.

6. Of course, some confidential sources genuinely "leak" information that has not previously been publicly disclosed. I believe that many people, upon hearing the phrase, "confidential source," think of these "Deep Throat" sources. But beat reporters in Washington, D.C., know such sources are rare. Much more important, on a day-to-day basis, are those trusted officials who provide confirmation and background details to news developments. These contacts are especially important at a wire service such as the A.P., because the A.P. must report news very quickly and every minute counts for a reporter following breaking developments. As conscientious journalists, we do not want merely to pass on official government communications to the press, or stories reported elsewhere in the media. Rather, we strive to make efforts to confirm independently the accuracy of what we learn and provide as much context as possible for readers.

7. Over the previous five years, confidential sources revealed or confirmed numerous facts that became central to my A.P. news stories. Some examples include:

- In at least two incidents at U.S. nuclear power plants, rules designed to prevent an unplanned nuclear chain reaction failed. Although the fact of an accident at a U.S.-operated fuel plant in Japan was public, I relied on confidential sources to explain the worker and system errors that caused a nuclear chain reaction. A copy of this story is attached hereto as Exhibit 1.

- In early 2001, the Bush administration planned deep cuts in programs aimed at helping Russia safeguard its nuclear materials. Sources who spoke on condition of anonymity discussed with me the dispute between Energy Secretary Spencer Abraham and the White House over funding for Russian nonproliferation programs. A copy of this story is attached hereto as Exhibit 2.

- Midwestern utilities lobbied to delay the implementation of smog-reducing regulations, according to sources who also revealed that one utility lobbying the White House claimed that a delay would save it $100 million in compliance costs. A copy of this story is attached hereto as Exhibit 3.

- Following Sept. 11, 2001, sources who spoke on condition of anonymity informed me that the Bush administration prepared to acquire 70 million barrels of oil for the government's emergency reserve. A copy of this story is attached hereto as Exhibit 4.

- FBI officials were telling energy companies in late 2001 that intelligence revealed Osama bin Laden had conditionally approved attacks on North American natural gas pipelines and facilities,

according to confidential sources. Subsequently, Attorney General John Ashcroft confirmed the warning. In January 2002, confidential sources confirmed for me that U.S. nuclear power plants were a target for al-Qaida airline attacks. Copies of these stories are attached hereto as Exhibit 5.

- Confidential sources proved essential to my coverage of the status of closed-door negotiations on a comprehensive energy bill in late 2003. For example, in a November 24, 2003 article, I relied on officials speaking on condition of confidentiality to report that the Bush administration, eager to broker a deal, was pressuring Republican leaders to drop liability protections for makers of a gasoline additive. A copy of this story is attached hereto as Exhibit 6.

- In a story about North Korea's restarting of a nuclear reactor, sources speaking on condition of anonymity provided information to me that there was no evidence that North Korea had yet begun processing plutonium to construct nuclear warheads. A copy of this story is attached hereto as Exhibit 7.

8. I came to report about Wen Ho Lee and allegations that U.S. nuclear secrets had been surreptitiously obtained by China as a breaking news story, the same way I have reported numerous stories in my career. I first [started] working on the story on March 8, 1999, when the Department of Energy fired Dr. Lee and issued a press release outlining many of the relevant details. I tried to confirm and explain the information the Energy Department had released and other media were already reporting, including Dr. Lee's name.

9. Based on my personal experience during my many years as a professional journalist, I believe that compelling me, or any journalist, to provide information about the identities of confidential sources will compromise my ability, and the ability of other journalists, to gather and report news and other matters of public concern. Many of my sources work in the government, and if they believed that my promises to keep their identities confidential might be compromised by the compelled disclosure, I would not be able to secure their cooperation and report newsworthy information to my readers provided by them in the future. The result would be not only less news, but less accurate news.

/s/

H. Josef Hebert

Sworn to before me this
28th day of July, 2004

/s/

Notary Public

B15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEN HO LEE,	)	
Plaintiffs,	)	
	)	Civ. A. No.
	)	1:99-3380 (TPJ)
- against -	)	
UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,	)	
Defendants.	)	

AFFIDAVIT OF PIERRE G. THOMAS

BEFORE ME, the undersigned authority appeared Pierre G. Thomas, who after first being duly sworn by me deposes and says:

1. I am over the age of 18 years and am qualified to make this affidavit under oath. Unless otherwise indicated, the statements in this affidavit are based upon my personal knowledge.

2. I am familiar with, but I am not a party to, this action. I submit this affidavit in response to this Court's Order to Show Cause, issued June 29, 2004, and to further demonstrate why I should not be held in contempt.

3. I have been employed as a professional journalist for twenty years. I graduated in 1984 from Virginia Polytechnic Institute and State University. I am a member of the National Association of Black Journalists.

4. I have been a national-affairs journalist for *The Washington Post*, Cable News Network ("CNN"), and currently, ABC News where I am the correspondent assigned to cover the United States Department of Justice. At all three news organizations, I have reported on numerous matters of public significance.

5. Much of my work as a professional journalist has concerned the Justice Department and other law enforcement agencies. I frequently report upon the mishandling of operations and investigations by Government agencies.

6. At all times relevant to this action, I was a CNN broadcast reporter. In my deposition in this matter, I was questioned about three 1999 news reports published on CNN's website concerning security problems at Los Alamos National Laboratory, two dated April 28, 1999, and one dated October 14, 1999.

7. I was not questioned about a number of other articles and broadcasts that I wrote or helped to write in the course of my reporting for CNN on the investigation and prosecution of Wen Ho Lee. In several of these, I focused on the shortcomings in the Government's case. Specifically:

- prior to any charges being filed against Dr. Lee, I reported on September 22, 1999 that the Government planned to expand its investigation after admitting that their initial focus on Dr. Lee was too narrow.
- I also reported on July 26, 1999 and September 22, 1999 (as well as on other dates) the opinions that Dr. Lee was targeted as a suspect because of his nationality and that likely he would never face espionage charges because the Government could not prove that he gave classified information to anyone.

- On the same day Dr. Lee was indicted, on December 10, 1999, I again reported that the Government's case had no evidence Dr. Lee gave tapes to anyone or that he had been in contact with any foreign government after the tapes disappeared.

- After the judge released Dr. Lee on bail, on August 25, 2000 and on August 29, 2000, I reported on an FBI agent who later admitted that testimony in connection with an earlier bail petition had misled the judge. Further, I reported that the government still lacked evidence that Dr. Lee gave the downloaded tapes to anyone.

- Finally, in September 2000, after Dr. Lee pled guilty and was released from prison, I reported on congressional and White House criticism of the government's investigation of Dr. Lee.

Copies of some of my reporting on the flaws in the government's case against Dr. Lee are attached as composite Exhibit A.

8. In reporting for news organizations, I have regularly found it necessary to rely upon information provided by people who agreed to speak with me only if I agreed to keep their identities confidential. In general, these sources extract this promise from me because their position in the Government or the private sector puts them at significant risk if they disclose the information they wish to provide to me, but they believe the public needs to know this information. In every case in which I have agreed to keep a source confidential, information of vital concern to the public otherwise would have remained shielded from the public's view.

9. The press is the conduit for the flow of information that enables the public to monitor its Government. The ability of journalists like me to promise confidentiality helps keep the flow of this type of information unobstructed. Otherwise, the information that flows to the public would in many cases be incomplete, biased, or stifled.

10. The exposure of ineffective or improper Government activities by my confidential sources has, on numerous occasions, led to changes in the law or Government policy in ways that are unequivocally positive for the citizenry.

11. (a) For example, in 1991 as a Staff Writer for *The Washington Post*, I was part of a team of journalists that became finalists for a Pulitzer Prize and was awarded on two different occasions the Morton Mintz Investigative Award for a series of articles about illegal gun-running in Washington, D.C. Gun-runners would pay straw purchasers – typically, needy or drug-addicted Virginia residents – to buy guns in Virginia. The gun-runners would then take delivery and sell the weapons in the District, where the purchase and importation of guns is illegal. The guns would turn up at crime scenes all over the District. The articles on which I worked focused on what little law enforcement was doing or could do to enforce existing laws in both jurisdictions.

(b) Many of these articles relied on information provided by confidential sources, including federal and state law enforcement officials. For example, confidential government sources identified for me loopholes in existing laws that allowed straw purchasers to buy guns undetected and demonstrated that many straw-purchasers were not prosecuted. If I had no ability to promise confidentiality to these sources, they would not have furnished vital information for these articles about the Government's failure to address a serious issue of personal safety.

(c) Fewer than six months after the publication of my first article, the Virginia Legislature began examining the problem of gunrunning. Not long thereafter, the Legislature passed tighter gun laws, including a one-gun-per-month limit on handgun purchases, to try to put a halt to the straw purchase schemes.

(d) Copies of selected articles that I wrote or helped to write concerning the illegal gun trade and Virginia's reaction to the problem are attached hereto as composite Exhibit B.

12. (a) In 1993, also while at *The Washington Post*, I authored several articles about the Government investigation into the Bureau of Alcohol, Tobacco and Firearms ("ATF")'s 1993 raid on the Branch Davidian compound in Waco, Texas. Four federal agents were killed and 16 others wounded during the raid. More than 80 Branch Davidians later died when the compound caught fire after the FBI injected tear gas inside. Much of the investigation concerned whether ATF proceeded with the raid despite bad intelligence, questionable tactics, and faulty decision-making. Then-ATF Director Stephen Higgins and several top-ranking officials were the focus.

(b) Many of these articles relied on information from confidential sources. Specifically, confidential Government sources questioned why ATF entered a heavily-armed compound in broad daylight. These sources revealed that Branch Davidian leader David Koresh knew the identity of a Government informant who had infiltrated the group, and that ATF commanders knew they had lost the element of surprise, but the raid nonetheless went forward. Confidential sources also revealed that the raid was planned less than a week before its execution, and the plan was not detailed in accordance with ATF guidelines. If I had no ability to promise confidentiality to these sources, they would not have

furnished vital information for these articles about the Government ineptitude that led to the deaths of its own employees and the people inside the Davidian compound.

(c) During the course of my reporting and that of others, an independent review panel concluded that ATF officials used a "pattern of deception" to try to conceal the problems with the raid, and that ATF knew that the Davidians learned of the mission prior to its launch, giving them time to prepare a counterattack. Director Higgins, and five senior officials, were removed from their jobs with the agency as a result.

(d) Copies of selected articles that I wrote or helped to write concerning the ATF raid at Waco and the ensuing investigation are attached hereto as composite Exhibit C.

13. (a) In 1995, in the wake of the bombing at the Alfred P. Murrah Federal Building in Oklahoma City that killed or injured more than 600 people, I wrote numerous articles for *The Washington Post* about the investigation into the identities of those responsible.

(b) Many of these articles relied heavily on confidential law enforcement officials. For example, some sources provided information that the Government quickly had ruled out a vast coordinated effort or wide-scale terrorist attack, while other sources questioned whether the prosecution had ruled out a broader conspiracy too soon and focused too narrowly on Timothy McVeigh and Terry Nichols. These sources indicated that there might have been several others involved in the bombing that the Government could not identify. If I had no ability to promise confidentiality to these sources, they would not have furnished vital information for these articles about the Government investigation to uncover and punish all of those responsible for the Oklahoma City bombing.

(c) My reporting and that of others was instrumental in helping a nervous public sort through the course of the Government investigation, overseeing what steps the Government was taking to bring those responsible to justice, how secure the public could be that the right people had been identified, and what efforts were being made to root out all of their accomplices.

(d) Copies of selected articles that I wrote or helped to write concerning the Government investigation in the aftermath of the Oklahoma City bombing are attached hereto as composite Exhibit D.

14. (a) Six years after Oklahoma City, when America experienced a large-scale terrorist attack, I was a reporter for ABC News. I along with my colleagues at ABC News received a Peabody Award for our coverage of the World Trade Center and Pentagon on September 11. Our efforts included coverage of the now infamous July 2001 "Phoenix Memo," an internal FBI warning memo about Islamic terrorists training at U.S. flight schools and the possible connection between these students and Osama Bin Laden. The memo, which went unheeded at the FBI, suggested a nationwide sweep of flight schools for possible terrorists. ABC News closely analyzed other pre-attack warnings as well.

(b) Many of the articles about the September 11, 2001 terrorist attack relied heavily on confidential Government sources. For example, confidential sources revealed that before the attack, FBI headquarters rewrote and weakened portions of an affidavit that the FBI's Minnesota field office had drafted in support of an application for a search warrant for records from Zacarias Moussaoui's computer. These sources complained the edits hindered the investigation after the application for the warrant was denied. Confidential government sources also revealed the National

Securitv Agency's failure to translate two intercepted Arabic telephone conversations the day before the attack which said "tomorrow is zero day" and "the match begins tomorrow." If I had no ability to promise confidentiality to these sources, they would not have furnished vital information for these articles about the Government investigation into what more might have been done to prevent the September 11 tragedy, and what may be done in the future to prevent it from happening again.

(c) My reporting, and that of my colleagues at ABC News, was instrumental in identifying and analyzing the uncoordinated manner in which federal law enforcement agencies received and processed intelligence information prior to the September 11. This reporting helped the public put into perspective the administration's creation of the Department of Homeland Security, one way in which the Government has attempted to improve, coordinate and consolidate functions of the federal agencies, in order to provide better intelligence.

(d) Copies of selected articles that I wrote or helped to write concerning the Government investigation into the September 11 attacks are attached hereto as composite Exhibit E.

15. In my deposition taken by Dr. Lee's lawyers in this matter, I tried to answer as truthfully and as fully as I could all questions that would not require me to breach promises I made to sources to keep their identities confidential. I engaged in far more discussion with Dr. Lee's counsel about my conversations with sources than I or most any other journalist would be comfortable doing. I did so to comply, as best I could without breaching my promises to sources, with the direction of this Court and with all due respect to Dr. Lee and his counsel.

16. I can provide no further information than that which I gave in my deposition without breaching promises to these sources. The promises were express conditions on which my interviews with these people were based. Had I not made the promises, these people would not have provided me the information. Further, if I were to breach my agreements with these sources, even under Court order, I could no longer function effectively and accurately in reporting on matters of public interest; as my reputation would become that of a journalist who might not keep his promise to a source.

17. For these reasons, more fully explained in the legal memorandum submitted on my behalf, I respectfully request that this Court find that I have shown sufficient cause why I should not be held in contempt of court.

FURTHER AFFIANT SAYETH NOT.

/s/
Pierre G. Thomas

DISTRICT OF COLUMBIA

The foregoing instrument was acknowledged before me this 27th day of July, 2004, by Pierre G. Thomas, who is personally known to me or has produced a driver's license as identification.

Notary Commission Expires:

07/27/04
Date

/s/
Signature

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEN HO LEE, Plaintiff, v. UNITED STATES DEPARTMENT OF JUSTICE, et al., Defendants.	Civ. A. No. 99-3380 (TPJ)

DECLARATION OF WALTER PINCUS

I, Walter Pincus, hereby declare under the penalty of perjury as follows:

1. I am a staff writer for The Washington Post. In 1999, 2000 and 2001, I authored or co-authored nearly 100 news articles reporting on security concerns at the Los Alamos National laboratory. A small number of those articles concerned the investigation, firing, prosecution and conviction of Wen Ho Lee. I submit this declaration in opposition to Mr. Lee's motion to compel me to identify the confidential sources who provided me with information concerning him that was reported in those articles.

2. I have worked as a journalist almost continuously since graduating from Yale University in 1954 – for the New York Times, the Wall Street Journal, the Washington Star, the New Republic, NBC News, CBS News and, for 35 years, The Washington Post. While working as a journalist, I have

also studied law, receiving my J. D. degree from the Georgetown University Law Center in 2001, and taught seminars on the oversight of government at Yale University and Stanford University's Washington program. I have been a member of the Council on Foreign Relations for more than 30 years.

3. Much of my work in journalism has been in the field of intelligence and national security. My non-journalistic experience has been in those areas as well. From 1955 to 1957, I served in the U.S. Army Counterintelligence Corps. In 1962-63, I directed an investigation into foreign government lobbying for the Senate Foreign Relations Committee under its then Chairman, Senator J. William Fulbright. In 1969-70, I directed an investigation for the same Committee into U.S. military and security commitments abroad and their effect on U.S. foreign policy. Both investigations led to legislation – the first to a revision of the Foreign Agents Registration Act; the second to a series of limiting amendments on defense appropriations bills that culminated in the Hatfield-McGovern legislation to end the Vietnam War.

4. In my reporting for The Washington Post and other news organizations, I have regularly found it necessary to rely upon information provided by confidential sources – individuals who agreed to speak with me only after being assured that their identities would not be revealed. In general, those individuals were providing information about activities within government that they believed the public had a right to know. Sometimes that information provided evidence of wrongdoing; sometimes it revealed facts that were embarrassing to those in power; and sometimes it provided insights into how governmental decisions were made or how current events affected the public interest. In all of these cases, factual information that I believed was of

vital interest to the public would not have been published if I had not promised to maintain the confidentiality of those individuals who were in a position to disclose it. Some examples of my reporting that depended upon information from confidential sources are set forth below.

5. In 1977, I wrote the first stories about the neutron warhead. Copies of those stories are attached to this Declaration as Exhibit A. Those stories, for which I received the George Polk Award, depended in good part on information provided by confidential sources. Ultimately, President Carter decided to defer production of neutron missiles and artillery shells, because the publicity generated by the published stories created public opposition at home and in Europe against those weapons.

6. For six years I covered the Iran-Contra affair. Some of my stores are attached as Exhibit B. In the course of my reporting on this matter, I published once-classified information that was provided by confidential sources. For example, I wrote one of the first stories confirming that secret shipments of arms were sent to Iran to obtain release of hostages at a time when administration officials were refusing to confirm that fact. I used confidential sources within the executive branch and on Capitol Hill, as well as foreign officials and private individuals, all of whom needed to be assured their names and in some cases their employment would not appear. My reporting and that of other reporters were instrumental, I believe, in prompting the appointment of an independent counsel.

7. In 1992, I co-wrote stories on the Bush administration's reviewing Presidential-candidate Bill Clinton's passport files. See Exhibit C. Again, these stories relied upon information provided by confidential sources. And again, these and other stories ultimately led to the appointment of an independent counsel.

8. I covered the case of confessed-spy Aldrich H. Ames and its aftermath. See Exhibit D. Much of my analysis of the significance of this case was based upon interviews with confidential sources inside and outside government who were familiar with the investigation and prosecution of the case.

9. My recent reporting has focused on the intelligence community, Osama bin Laden, terrorism and the war in Iraq. In 2000, I was awarded the first Stewart Alsop award for national security and intelligence reporting by the Association of Foreign Intelligence Officers. Some of the stories that led to that award are attached as Exhibit E. Many of those stories relied upon information provided by confidential sources.

10. In 2001, I shared a Pulitzer Prize for National Reporting with four other Post reporters for our stories about Osama bin Laden. Copies of my stories are attached as Exhibit F. Confidential sources provided critical information that contributed greatly to the overall impact of those stories.

11. Since late 2002, I have been writing about the intelligence community, weapons of mass destruction and Iraq – including the United Nations inspections. Again, confidential sources both inside and outside the U.S. government have been the foundation for this reporting. Some stories illustrating this coverage, which have been submitted in Pulitzer Prize entries for 2003, are attached as Exhibit G.

12. In my current reporting on the intelligence community, the Bush administration, terrorism and the war in Iraq, I rely constantly upon factual information and observations provided by intelligence professionals and other government and congressional experts who will speak only upon the condition of complete anonymity. If I were to breach a promise of confidentiality to any of my confidential sources, or if in the future I were unable to assure anonymity

to sources, I would be unable to cover these areas accurately and effectively. Knowledgeable individuals would either not discuss matters or would only say what is already on the public record, whether it was accurate or not.

13. In this case, Wen Ho Lee seeks to identify the confidential sources who provided information to me, which I checked as best I could to confirm accuracy, concerning official investigations underway into allegations of espionage in the nation's nuclear weapons laboratories. Over time, some of these stories dealt with his firing, prosecution and conviction for mishandling classified information.

I began covering the subject of alleged espionage at the laboratories in late January 1999. On February 17, 1999, The Post published an article under my byline entitled "U.S. Cracking Down on Chinese Designs on Nuclear Data." See Exhibit H. The article reported that U.S. intelligence analysts in the mid-1990s had discovered that Chinese nuclear designs were "uncomfortably similar" to those of the U.S. Trident missile warhead. That discovery, I reported, had by 1997 prompted a major FBI counterespionage investigation and raised "concerns about curtailing the traditional openness within the country's nuclear scientific circles." The article disclosed that the FBI investigation had begun with employees at the Los Alamos laboratory, where the Trident warhead had been designed, and that more than a year earlier had "c[o]me to focus on an Asian American scientist at Los Alamos who had contacts with the Chinese and has since been transferred to a job outside the national security area." The article did not identify this individual, although it was later disclosed that he was Wen Ho Lee. This article was based in large measure on interviews with individuals who insisted on anonymity. The public interest was served, I believe, by the publication of this article, and it would have been impossible for me to collect and report the information

contained in this article if I had not promised anonymity to those sources.

14. On March 9, 1999, The Post published an article under my byline entitled "Spy Suspect Fired at Los Alamos Lab."[1] See Exhibit I. That article reported that "Energy Secretary William Richardson had fired a Los Alamos National Laboratory weapons designer yesterday who was under suspicion of handing nuclear secrets to China in the late 1980s." This and other information in the article was provided by confidential sources to whom I promised anonymity. I believe that this article, too, was in the public interest, and it could not have been written if I had not assured anonymity to my sources.

15. On November 20, 1999, The Post published an article entitled "Fired Lab Scientist Can't Account for Some Disks," under the joint byline of Vernon Loeb and me. See Exhibit L. The article reported: "Former Los Alamos scientist Wen Ho Lee has told government investigators that he cannot account for several computer diskettes onto which he downloaded nuclear secrets, according to Clinton administration officials." While much of the specific information contained in this article was provided by confidential sources, FBI Director Louis J. Freeh was identified as having said that he expected Lee to be indicted for gross negligence in handling classified information. Lee was subsequently indicted for mishandling classified

---

[1] Between the publication of my February 17 article and my March 9 article, at least two other news organizations also published articles concerning Lee. On March 6, 1999, the New York Times published an article under the byline of James Risen and Jeff Gerth entitled "Breach at Los Alamos: A Special Report; China Stole Nuclear Secrets for Bombs, U.S. Aides Say." A copy of that article is attached hereto as Exhibit J. On March 8, 1999, the Associated Press published a story by H. Josef Hebert entitled "Government Scientist Involved in Probe is Fired." A copy of that article is attached hereto as Exhibit K.

information, and he pled guilty to this charge, a felony, based on the facts set forth in this article. Copies of the grand jury indictment, as well as the press releases of the FBI and U.S. Attorney's Office concerning the indictment, are attached hereto at Exhibit M.

16. As part of his plea agreement with the United States, Wen Ho Lee was required to subject himself to questioning concerning his handling of classified information. On February 4, 2001, The Post published an article under my byline entitled "Interrogation of Lee Raises New Questions, Sources Say." See Exhibit N. That article began as follows:

> The FBI and Justice Department prosecutors are considering seeking court approval to further question former Los Alamos scientist Wen Ho Lee under oath because they are not satisfied with the answers he gave during 60 hours of questioning last November and December, according to sources close to the investigation.
>
> During the interrogation by FBI agents, Lee's answers raised new questions about his relationships with nuclear scientists from China and Taiwan, the sources said. He also has yet to provide a verifiable explanation of why he downloaded U.S. nuclear secrets to portable computer tapes while working at the Los Alamos National Laboratory and what he did with the tapes, the sources said.

To my knowledge, Mr. Lee never provided a verifiable explanation of why he downloaded those nuclear secrets and what he did with the tapes. It was in the public interest, I believe, for those facts to be known. Those facts and other information in this article were provided by confidential

sources, both inside and outside government, who spoke to me only upon the assurance that I would not identify them.

17. Before asserting my First Amendment privilege not to identify my confidential sources in this case, I reviewed the Second Amended Complaint, which purports to state Mr. Lee's claims for violation of the Privacy Act. That complaint does not allege that any disclosure contained in any of my four articles involved any violation of the Privacy Act. The Complaint makes no mention whatsoever of the February 17 and November 20, 1999 articles and, as explained below, its brief references to my other articles do not appear to state any claim for violation of the Privacy Act.

18. The Second Amended Complaint contains a passing reference to the March 9, 1999 article – specifically, the statement, attributed to "an official familiar with the investigation," that "[w]e are still trying to pin down exactly when information was passed." I do not understand how that statement could implicate any violation of the Privacy Act. As I explained in my deposition, that was not a statement about Mr. Lee. It was not a statement, in other words, to the effect that the government was trying to pin down when information was passed by Mr. Lee. It was simply a statement that the government was trying to pin down when information was passed to the Chinese – by anyone.

19. The Second Amended Complaint contains a single reference to my February 4, 2001 article, alleging as follows:

> Citing government "sources close to the investigation," the article reveals selective details of information provided by Dr. Lee to Defendants during the secret debriefings. Moreover, an unnamed "government official" falsely depicted Dr. Lee's responses as "evasive, confusing, and

> frustrating for the people conducting the interview."

The interview referred to in this passage from the Complaint is the questioning that Mr. Lee was required to undergo as a condition of his guilty plea. At this point, he was a convicted felon fulfilling the requirements of his plea agreement. It is difficult to conceive of the privacy interest that Mr. Lee could claim in such an interview, much less how he can claim to have suffered compensable damage from the release of information contained in that interview. Although he complains of the characterization of his responses as "evasive, confusing, and frustrating," he does not attempt to state a claim for defamation, nor can I imagine how he could do so.

20. It would be a disturbing application of the Privacy Act, in my view, if it were applied to prohibit the kind of factual, newsworthy disclosures contained in my articles about the possible disclosure of nuclear secrets to China or Taiwan and the investigation and conviction of Mr. Lee for mishandling classified information entrusted to him. But whether or not the Privacy Act can be applied to such disclosures, it is apparent for the reasons stated above that my articles are not the basis for the Second Amended Complaint.

21. It is also apparent that, for the most part, Mr. Lee's attorneys have not inquired about my articles in the depositions they have taken in this case. Before I invoked my First Amendment privilege at my deposition, I read all 20 of the depositions of non-journalists in the case. Only four of those 20 witnesses were asked about the sources for my February 1999 article; only six were asked about the sources for my March 1999 article; only one was asked about the sources for my November 1999 article; and only one was asked about the sources for my February 2001 article. In

short, although Mr. Lee's counsel asked me to identify the sources for each of these stories, they did not make any systematic effort to ask the other witnesses in the case whether they were sources, or could identify the sources, for any of the information in my articles.

22. I cannot identify my confidential sources for these articles without violating commitments that I made to those individuals to maintain their anonymity. Those commitments were a condition of my interviews with these individuals. If I had not promised them anonymity, they would not have provided the information I was able to report. If I were to breach my commitment to these sources, even under Court order, I could no longer function effectively and with accuracy in reporting on matters of intelligence and national security.

23. For these reasons, more fully explained in the legal memorandum submitted on my behalf, I respectfully request that the Court deny Mr. Lee's motion to compel.

I declare under the penalty of perjury, this 11th day of March 2004, that the foregoing is true and correct.

/s/

Walter Pincus

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEN HO LEE and SYLVIA LEE, Plaintiffs, - against – UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, and UNITED STATES DEPARTMENT OF ENERGY, Defendants.	Civ. A. No. 1:99-3380 (TPJ)

AFFIDAVIT OF JEFF GERTH

DISTRICT OF COLUMBIA: ss :

JEFF GERTH, being first duly sworn, deposes and says:

1. I am a reporter for The New York Times ("The Times") and have worked for The Times as a journalist for more than twenty-five years. I submit this affidavit in support of the motion to quash a subpoena directed at me.

2. I am fully familiar with the facts set forth herein and make this affidavit based on my personal knowledge unless otherwise stated. The exhibits attached to this affidavit are true and accurate copies of the documents cited herein.

3. I have spent most of my career at The Times working as an investigative journalist on a wide variety of issues,

including organized crime, intelligence, government regulation, corporate affairs, and the financing of political candidates.

4. I have won numerous awards in connection with my investigative reporting. In 1999, I was awarded the Pulitzer Prize for my reporting about the transfer of American technology to China. This past year I shared the Pulitzer Prize along with other journalists at The Times for my coverage of the September 11, 2001 terrorist attacks. In 1981, I and two colleagues won the George Polk Award for my work concerning former United States intelligence agents working in Libya. In 1977, I and a colleague were awarded the Newspaper Guild's Front Page Award.

5. On March 6, 1999, The Times published an article written by my colleague James Risen and I entitled "Breach at Los Alamos, A special Report, China Stole Nuclear Secrets for Bombs, U.S. Aids Say." The article described suspected espionage that the government believed to have allowed the Chinese to steal nuclear secrets from an American Government laboratory and make significant advances in the miniaturization of China's nuclear bombs. The article indicated that there was a suspect in the espionage case but did not identify the subject by name. Attached hereto as Exhibit A is a copy of the March 6, 1999 article.

6. The March 6, 1999 story was written with the help of confidential sources with whom I had no personal contact. I do not know the identity of those confidential sources related to the parts of the March 6 story having anything to do with the unnamed suspect. Nor do I know what federal government agencies they may or may not have worked for at the time Mr. Risen and I wrote the March 6 story.

7. On April 28, 1999, Mr. Risen and I co-wrote another article published in The Times entitled "U.S. Says Suspect Put Code On Bombs In Unsecure Files." The article reported

that the government suspected one of the plaintiffs, in this case Wen Ho Lee, of spying for China and of having improperly transferred huge amounts of secret data from a computer system at a Government laboratory potentially compromising the United States' nuclear arsenal. Attached hereto as Exhibit B is a copy of the April 28, 1999 article.

8. Like the earlier article that I co-authored with Mr. Risen, the April 28, 1999 story was written with the help of confidential sources. I do not know the identity of those confidential sources. Other than the information that is listed in the April 28 story itself, I have no information about what federal government agencies the confidential sources may or may not have worked for at the time Mr. Risen and I wrote the April 28 story.

9. I have been informed that the plaintiffs in this case allege in their Second Amended Complaint that the March 6 and April 28, 1999 stories were both based on "illegal leaks" of private information from United States government officials to The Times.

10. I have further been informed that the March 6 and April 28, 1999 articles are the only articles of mine that plaintiffs claim have anything to do with this case.

11. In late August, I received a letter from Heather Hersh Gilhooly, counsel for plaintiffs in this case, attaching a subpoena seeking my deposition testimony and the production of various documents related to my reporting of the stories about Wen Ho Lee for The Times. A copy of the letter from Ms. Gilhooly and the attached subpoena is attached hereto as Exhibit C.

12. I have reviewed the document requests attached to the subpoena and have conferred with counsel about their substance. I do not have any documents in my possession, custody or control that are responsive to the subpoena.

13. I have been informed that plaintiffs' counsel has advised my counsel that they expect to ask me questions asking me to identify the agencies that the confidential source or sources for the March 6 and April 28, 1999 articles I co-wrote with Mr. Risen worked for. As stated above, I cannot identify which agency or agencies the source(s) worked for. Any assistance I could render in doing so would in my view compromise to a significant degree my ability to continue reporting as well as the ability of other journalists to do so.

14. Based on my years of experience as a journalist, I firmly believe that compelling reporters to testify about conversations with and/or the identity of confidential sources would seriously impede all reporter's ability to gather and report the news. That is certainly true of me. Many of the stories that I have written have been based on confidential sources. Without confidential sources, it would be nearly impossible to do effective investigative reporting.

15. Compelling journalists to testify about their conversations with confidential sources will inevitably hinder future attempts to obtain cooperation from those or other confidential sources. It creates the inevitable appearance that journalists either are or can be readily converted into an investigative arm of either the government or of civil litigants. This would seriously compromise journalists' integrity and independence qualities that are essential to our ability to gain the trust of potential news sources and to effectively investigate and report on newsworthy events. Persons who would otherwise be willing to speak to me would surely refuse to do so if they perceived me to be not a journalist who keeps his word when he promises confidentiality but one who would break it in the interest of a civil litigant.

16. If court orders compelling reporters' testimony about confidential sources in cases such as this were easily obtained, news organizations and reporters would be chilled in their reporting of news matters vital to the public. Reporters and editors might decide to eliminate from news reports references to sources or other information likely to attract subpoenas. In some cases, the press might well choose to avoid certain controversial stories altogether.

17. In addition, compelling testimony of journalists about interactions with confidential sources would make the promises journalists make to such sources meaningless. I take such promises very seriously. I cannot break them.

18. Compelling testimony of journalists about interactions with confidential sources is particularly offensive in instances such as this one where it is clear that the plaintiffs have not exhausted all alternative sources of information. Specifically, I understand that the plaintiffs have not done everything within their power to get information from the government about the sources of any leaks to The Times concerning Wen Ho Lee.

19. I respectfully urge the Court to quash the subpoena.

/s/
Jeff Gerth

Sworn to before me this
23 day of September, 2002

/s/
Notary Public

Commission Expires: 1 March 2003

B39

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

In re Special Proceeding	)	Misc.
	)	01-47T

AFFIDAVIT OF JAMES TARICANI

State of Rhode Island)
) ss.
County of Providence)

James Taricani, being duly sworn, says:

1. I am an investigative reporter for WJAR, a television station that is owned and operated by the National Broadcasting Company, Inc. WJAR serves Providence and Rhode Island and is the leading television station in the market. I have worked as a professional journalist for 28 years in Rhode Island.

2. In my capacity as the lead investigative reporter for WJAR, I have reported on the Operation Plunder Dome investigation and the corruption trial of Mayor "Buddy" Cianci and co-defendants. In the course of my investigation, I obtained a videotape containing hidden camera footage showing an alleged bribe being paid to defendant Frank Corrente by Antonio Freitas, a government witness. On February 2001, WJAR broadcast a news report concerning Operation Plunder Dome that featured excerpts from the videotape, as part of its 11:00 p.m. newscast.

3. The source who provided me the videotape did so only upon obtaining my assurance that I would protect the confidentiality of the identity of the source.

4. On July 15, 2002, I appeared for a deposition before Special Prosecutor Marc DeSisto. I refused to answer questions that would have required me to reveal information about my newsgathering practices and that could lead to the discovery of the identity of my confidential source.

5. In the course of my 28-year career in journalism, I have relied on confidential sources to report more than one hundred stories, on diverse issues of public concern such as public corruption, sexual abuse by clergy, organized crime, misuse of taxpayers' money, and ethical shortcomings of a Chief Justice of the Rhode Island Supreme Court. I have scrupulously maintained the confidentiality of these sources and have never disclosed the identity of a confidential source to anyone other than another colleague working with me on the same story.

6. My ability to offer confidentiality to sources and to maintain their confidentiality has been indispensable to my ability to report important matters of public interest. Without a promise of confidentiality, many of my sources would not have come forward and provided valuable information. Some of the wrongdoing my stories have disclosed would never have come to light if I were not able to provide a meaningful promise of confidentiality to sources.

7. For example, in the early 1980's, I conducted a six-month investigation into the dumping of toxic waste in Rhode Island landfills. I reported that carting companies from New Jersey, supported by organized crime, were illegally dumping material in Rhode Island, with the support of organized crime in Rhode Island. This report sparked a state grand jury investigation and several civil lawsuits. I relied on several confidential sources to report this story. I

could not have uncovered this unlawful activity without obtaining information under the promise of confidentiality. Some of my sources feared that their physical safety could be threatened if it were known that they provided me information.

8. A confidential source was also central to my investigation in the 1980's into the Laborer's International Union of North America and its misuse of union dues. I believe the public attention provoked by my reports helped lead to the eventual indictment of the union's president and reputed mafia boss, Raymond Patriarca. I could not have reported this story without the participation of my confidential source. That source provided me information despite the source's belief that doing so constituted a threat to the source's life.

9. I have received four Emmy awards and ten Emmy nominations for my reporting. I have also received more than two dozen awards for investigative reporting from the Associated Press. In 1996, I won the prestigious Edward R. Murrow award from the Radio and Television News Directors Association. I received this award for my report concerning strip clubs in Providence and campaign contributions made to Mayor Cianci. Confidential sources played a critical role in the reporting of that story.

10. In 1996, I was inducted into the Rhode Island Heritage Hall of Fame for, as the citation stated, "serving the Rhode Island community by his reporting on government corruption, organized crime and health issues that affected the entire state." Maintaining a promise of confidentiality is critical to my ability to continue to gather news and report on these kinds of stories.

11. If compelled by the Court to disclose the identity of a confidential source, my ability to gather news and information from confidential sources, and report it to the

public, will be seriously undermined. Sources will fear that I cannot guarantee my promise of confidentiality. Many of my confidential sources have provided information at risk to their safety, livelihood and well-being. I have no doubt that sources will not be willing to come forward absent a meaningful promise of confidentiality or with the risk that this promise can be compromised. The loss of confidential sources will necessarily and substantially reduce the quantity, and quality, of important news available to the public about issues of widespread concern.

/s/
James Taricani

Subscribed and sworn to
this 6th day of September, 2002.

/s/
Notary Public

B43

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN J. HATFILL, M.D.,	)	
	)	
Plaintiff,	)	Case No.
	)	1:03-CV-01793
	)	(RBW)
v.	)	
	)	
ATTORNEY GENERAL JOHN ASHCROFT, et al.,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF BRIAN ROSS

I, Brian Ross, hereby declare under the penalty of perjury as follows:

1. I am the Chief Investigative Correspondent for ABC News in New York. My reports are regularly broadcast on such television programs as *20/20, Primetime Live, Nightline, World News Tonight with Peter Jennings* and *Good Morning America*. My reporting has earned a number of major awards for outstanding investigative journalism in broadcasting, including five DuPont awards presented by Columbia University, four Peabody awards and ten Emmy awards. Between 2001 and 2004, I regularly presented news reports on the federal investigation of the anthrax terror attacks that killed five people and led to the closing of the United States Capitol for the first time in recent history. Where events warranted, those reports concerned, among other matters, the investigation of Dr. Steven Hatfill as a "person of interest" in the anthrax investigation. Several of

those broadcasts are referenced in a subpoena issued to ABC News, by which Dr. Hatfill evidently seeks the identification of confidential sources who provided me with information for those reports. A copy of the subpoena is attached hereto as Exhibit A. I submit this declaration in support of a motion to quash Dr. Hatfill's subpoena.

2. I have worked as a journalist since graduating from the University of Iowa in 1971. I began my career as a network correspondent in 1976 with NBC News, where I worked until 1994. I have been the Chief Investigative Correspondent for ABC News since that time.

3. In my investigative reporting for NBC News, ABC News and other news organizations, I have regularly found it necessary to rely upon information provided by confidential sources – individuals who agreed to speak with me only after being assured that their identities would not be revealed. Whether exposing wrongdoing, revealing facts embarrassing to those in power, or providing insight into governmental decision-making, these sources all relied upon my guarantee of confidentiality to bring into the open information they believed the public had a right to know. In all of these cases, factual information of significance to the public would not have been brought into the public domain had I not promised to maintain in confidence the identity of those who provided the information. Some examples of my reporting that depended upon information from confidential sources are set forth below.

4. In the 1970's and 1980's, my reporting included stories on the Mafia domination of American labor unions, failures in the federal government's war on drugs, criminal activities of the Bank of Credit and Commerce International ("BCCI"), attempts by Saddam Hussein to acquire materials to build a nuclear weapon, and illegal child labor used by the Walmart corporation in Bangladesh. In each of these reports,

I relied extensively on information obtained from confidential sources in the federal government and elsewhere, without whom I could not have brought these stories to light.

5. Since joining ABC News in 1994, I have relied on confidential sources to report huge flaws in the FBI's crime laboratory, the sale of prisoners' kidneys by the People's Republic of China, a corruption scandal that led to the indictment of the Governor of Illinois, and the unchecked influence of large corporations in federal political campaigns. Each of these stories was based on information obtained from confidential sources, without whom these reports simply would not have been possible.

6. Since September 11, 2001, I have been one of the primary reporters on terrorism for ABC News. Shortly after the attacks of 9/11, I was the first journalist to report on the FBI's failure to pursue leads regarding Zacarias Moussaoui, the reputed "20th hijacker." Transcripts of some of my reports on that topic are attached to this Declaration as Exhibit B. These reports depended in large measure on information provided by confidential sources, without whom I would have been unable to discover and report that the FBI had Moussaoui in custody several weeks before the 9/11 attacks. I believe that these reports and others helped lead to the establishment of the President's 9/11 Commission.

7. Also in September, 2001, I was one of the first reporters to publicly identify Mohammed Atta and describe him as the ringleader of the World Trade Center and Pentagon attacks. Transcripts of these broadcasts are attached as Exhibit C. For these reports, I again relied extensively on confidential sources, without whom I would have been unable to inform the public on events of great importance.

8. For the last three years I have continued to investigate and report on the intelligence failures of the United States government prior to the 9/11 attacks. For these reports, I again drew heavily on information provided by confidential sources. Absent the information provided by these sources, I could not have reported these stories.

9. In my current reporting on terrorism and the war in Iraq, I rely constantly on factual information and observations provided by intelligence and law enforcement professionals, and other government and congressional experts, who speak only upon the condition of complete anonymity. If I were to breach a promise of confidentiality to any of my confidential sources, or if in the future I were unable to assure anonymity to sources, my ability to report on these subjects accurately and effectively would be greatly diminished if not destroyed entirely. Knowledgeable individuals would be reluctant to discuss sensitive matters with me for fear that their identities may one day be revealed. Inevitably, the American public would receive less information on critical issues related to the performance of their government.

10. In this case, Dr. Hatfill seeks to identify the confidential sources who provided me with information concerning the massive federal investigation into the anthrax terror attacks – one of the largest investigations in FBI history. This story, much like the investigation, is ongoing, and I am continuing to gather information and deliver reports as events warrant.

11. I began covering the subject of the anthrax attacks in October, 2001, with the first reports of a death in Florida. As the investigation progressed, I learned and reported that Dr. Hatfill was under investigation in connection with the anthrax attacks. The June 25, 2002 *World News Tonight* broadcast include my report that FBI agents had executed a

search warrant at Dr. Hatfill's apartment. See Exhibit D. That report disclosed that the FBI had come to regard Dr. Hatfill as a "person of interest" in its investigation. My report was based in large measure on interviews with individuals who insisted on anonymity. I believe that the public interest was served by the disclosure that the FBI had a lead in the anthrax case. At that time, many Americans believed that foreign agents working for Iraq may have been responsible for the anthrax attacks. The information in my June 25, 2002 report revealed that the FBI was focusing much of its attention on an *American* suspect, not a foreign agent. The report was based largely on information obtained from confidential sources on the express condition that I would not reveal their names.

12. On the June 26, 2002 *Good Morning America* program, I again reported that Dr. Hatfill was a person of interest in the investigation. See Exhibit E. I also reported that there was circumstantial evidence potentially linking Dr. Hatfill to the case, including the fact that he had once lived near an elementary school in the town of Greendale, Zimbabwe (a name similar to the "Greendale School" used on the return address for the anthrax letters). Here again, my reporting depended largely upon confidential sources to whom I promised anonymity. I believe that this report, too, was in the public interest.

13. On the June 27, 2002 *World News Tonight* program, I reported that the government was investigating whether there might be a connection between the anthrax attacks and a government report, written before the attacks, which described how an attack might hypothetically be carried out. The government report contained many details that were consistent with the events that ultimately occurred. See Exhibit F. As I reported, ABC News obtained a copy of the government report, which accurately predicted that an

anthrax attack could be sent through the mail, containing 2.5 grams of contaminated powder with one trillion anthrax spores per gram of powder. On that same broadcast, I also disclosed that the government report was written for Dr. Hatfill, and that former colleagues of Dr. Hatfill said that he received the anthrax vaccine and had access to a supply of anthrax while working as a government scientist. I believe that this information was of significant importance to a public still deeply troubled by these attacks and eager to know whether the authorities had made any progress in their investigation. Once again, were it not for promises of confidentiality, much of this information would have been unavailable to me and to ABC News' audience.

14. On August 11 and 12, 2002, I again appeared on *World News Tonight*, this time to report about Dr. Hatfill's public declaration of his own innocence. See Exhibits G & H. On those broadcasts, Dr. Hatfill was shown responding to the government's investigation, and stating that he had nothing to do with the mailing of the anthrax letters. I, in turn, reported that Dr. Hatfill remained a person of interest to investigators, in part because of information suggesting he had a motive for the attacks, and in part because of the reaction of bloodhounds to the scent at his apartment. Dr. Hatfill's denials notwithstanding, he remained, at that time, the focus of the government's investigation, and therefore at the center of a story that continued to capture the public's attention. Here again, the strength and accuracy of my reporting depended largely on anonymous sources who insisted that I not disclose their identity.

15. On October 22 and 23, 2002, I appeared on *World News Tonight* again to provide more details about the use of bloodhounds in the investigation of Dr. Hatfill. See Exhibits I & J. In these broadcasts (the latter report was substantially the same as my report from the previous night), I reported

that the FBI considered the reaction of the bloodhounds to Dr. Hatfill's scent to be an important piece of evidence. I also reported that investigators had gathered information on Dr. Hatfill's activities while in Africa in the late 1970s and 80s, a time period in which he claimed to have served with a Rhodesian military unit that had been accused of using anthrax and other biological agents against opponents of white minority rule. These broadcasts, too, relied extensively on confidential sources, who told me that the FBI was building a "growing case of circumstantial evidence" against Dr. Hatfill. Had I not made promises of confidentiality to my sources, my ability to report on these newsworthy matters would have been greatly compromised.

16. On June 9 and 10, 2003, I appeared, respectively, on the *World News Tonight* and *Good Morning America* programs to report on the draining of a Maryland pond suspected of containing evidence relevant to the anthrax investigation. See Exhibits K & L. As I reported on those occasions, the pond was being drained at significant public expense and inconvenience over a period of several weeks. My report sought to address the reasons for this government action, which, as my confidential sources told me, was related to the FBI's "working theory" that Dr. Hatfill used makeshift lab equipment to place anthrax into envelopes, and then dumped the lab equipment into the pond. I also reported that the FBI's continuing interest in Dr. Hatfill was buffeted, in part, by his alleged presence in Florida around the time that an anthrax letter was sent to a media company in that State, and by his apparent possession of the powerful antibiotic Cipro at the time of the anthrax attacks.[1] Once again, much of the information in my report – which, I

[1] Dr. Hatfill's subpoena also references a second transcript from the July 10, 2003 broadcast of Good Morning America. A copy of that transcript is attached as Exhibit M.

believe, served the public interest – only became available to me after I made promises of confidentiality to my sources.

17. Finally, on July 20, 2004, I appeared on *World News Tonight* to report on a change in the investigation's focus. See Exhibit N. As I reported that night, confidential sources informed me that lab tests had shown that the anthrax used in the attacks had been developed in the U.S. Army's weapons lab at Ft. Detrick, Maryland. As a consequence of that finding – which came nearly three years after the attacks, and with the perpetrator still at large – the FBI sent more than twenty agents to Ft. Detrick to pursue this lead in the anthrax investigation. I believe that the public had a right to know that the investigation into these attacks had taken a new turn, and I sought out information that would enable me to explain these events and their significance to ABC's audience. Here again, just as I have throughout my career, I learned significant pieces of information for that report from sources who would only discuss the investigation on condition of complete anonymity. My ability to maintain the confidence of those sources is absolutely critical to my ability to continue reporting about developments in the anthrax investigation.

18. I cannot identify my confidential sources for these reports without violating my commitments to them that I would maintain their anonymity. Those commitments were a condition of my interviews with these individuals. If I had not promised them anonymity, they would not have provided the information I was able to report. If I were to breach my promise to these sources, even under Court order, I fear that I would be branded as someone who does not keep his word, and – as a result – the kind of enterprise reporting I have pursued over the course of my 30-year career as a journalist would no longer be possible.

19. For these reasons, more fully explained in the legal memorandum submitted on my behalf, I respectfully request that the Court quash Dr. Hatfill's subpoena.

I declare under the penalty of perjury, this 2nd day of February, 2005, that the foregoing is true and correct.

/s/
Brian Ross

B52

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN J. HATFILL, M.D.,	)	
	)	
Plaintiff,	)	Case No.
	)	1:03-CV-01793
	)	(RBW)
	)	
	)	
ATTORNEY GENERAL	)	
JOHN ASHCROFT, et al.,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF DANIEL KLAIDMAN

I, Daniel Klaidman, hereby declare under the penalty of perjury as follows:

1. I am the Washington Bureau Chief for *Newsweek*, a weekly newsmagazine published by Newsweek, Inc. ("Newsweek"). In 2002 and 2003, I authored or co-authored a number of articles reporting on the federal investigation into the anthrax attacks of 2001. Two are referenced in a subpoena that Dr. Steven Hatfill served on Newsweek in connection with his Privacy Act case against the government. A copy of the subpoena is attached hereto as Exhibit A. I understand that Dr. Hatfill is seeking, among other things, the identities of any confidential sources that provided me and/or my co-authors with information for those articles. I submit this declaration in support of the motion to quash Dr. Hatfill's subpoena filed by the Washington Post, Newsweek, and the American Broadcasting Companies, Inc.

2. Upon graduating from Georgetown University in 1986, I began my career as a reporter for Legal Times, where I remained for eight years. I have worked as a reporter and/or Bureau Chief for Newsweek since 1996.

3. Of late, much of my reporting has been focused on terrorism and national security, but in years past much of my work focused on the Department of Justice.

4. In the course of my reporting for Newsweek and Legal Times, I have frequently relied upon information received from individuals in the government who agreed to speak with me only after being assured that their identities would be kept in complete confidence. These sources possessed information that they, and I, believed the public had a right to know. For a variety of reasons, however, they were unwilling to provide that information for attribution by name. The information that these sources possessed was often invaluable in explaining governmental actions and informing the public about the status of investigations and other matters in which the public had a vital interest. In such cases, I have not hesitated to promise, as a condition of receiving the information, that the source's identity will be kept confidential. Some examples of my reporting that depended upon information from confidential sources are set forth below.

5. In 1995, I reported on the stand-off and deadly FBI assault at Ruby Ridge. *See, e.g.*, Exhibit B. Critical to my account was the acquisition of a confidential report, written by the Department of Justice, from which I obtained evidence of the cover-up of the circumstances of the deadly assault. That report, and other supporting information I gathered, was only made available to me on the condition that I retain my source's anonymity. The publication of the information provided by this confidential source generated public and

official attention and helped spark a Congressional investigation of the Ruby Ridge episode.

6. In 1997, I wrote an article on the serious, and all too frequent, mistakes made by forensic experts at the FBI's vaunted crime laboratory. A copy of that story is attached to this Declaration as Exhibit C. Deeply embarrassing to the Bureau, and especially to then-Director Louis Freeh, the information at the heart of the article was only available to me because I made unequivocal and indelible promises of confidentiality. In part because of my articles and others, the FBI made significant reforms in the operation of its laboratories. I would have been unable to write the article were it not for the promises of confidentiality made to my sources.

7. During the 1990s, I authored several articles, published by Newsweek, that were deeply embarrassing to the Clinton Administration – including coverage of the Monica Lewinsky scandal, Paula Jones's sexual harassment lawsuit against the President, and the Democratic party's campaign finance scandal. *See, e.g.*, Exhibit D. Some of those articles also revealed information on the conduct of the Whitewater Independent Counsel's investigation that resulted in public criticism of that office. I believe that these articles served the public interest by promoting accountability and ethics in government. It is also my firm conviction that absent an assurance of confidentiality to my sources, I would not have been able successfully to report on matters of such sensitivity to a sitting President.

8. In 1997, I wrote several articles for Newsweek on the efforts of China to influence domestic politics. *See, e.g.*, Exhibit E. Those articles revealed, among other things, that the Chinese government secretly financed a California state politician's electoral campaigns. Much of the information contained in those articles came from interviews with

confidential sources who were unable publicly to disclose matters that were highly sensitive both to our government and that of a foreign nation.

9. My recent reporting has focused, in large measure, on terrorism, and the United States' efforts to combat it. In my capacity as Washington Bureau Chief, I oversaw Newsweek's award-wining coverage of September 11th, 2001, and its aftermath. I also co-authored several cover stories, including *The Hijackers We Let Escape*, published on June 10, 2002, which revealed the intelligence community's failure to share information about two 9/11 terrorists who had been living in the country for a year and a half before participating in the attacks, and *The Enemy Within*, published on June 23, 2003, which detailed how Al Qaeda was recruiting new members within the United States and planning to conduct additional attacks throughout the country. *See* Exhibit F. Those articles, which covered issues of manifest public importance, could not have been published without confidential sources.

10. More recently, I broke the story of White House Counsel Alberto Gonzales's central role in the creation of the White House's policy on interrogation of detainees—a policy that continues to be the focus of public controversy in this country and abroad. *See* Exhibit G. I never would have been able to bring this story to the public's attention without promising confidentiality to my sources.

11. In my current reporting on terrorism and other subjects, I continue to rely heavily upon the ability to obtain information through assurances of confidentiality made to members of the intelligence and law enforcement communities. Were I to breach a promise of confidentiality and identify any one of my sources, or were I in the future unable to assure anonymity to new sources, I would be unable to cover these areas accurately and effectively.

Knowledgeable individuals would either not discuss matters or would only say what is already on the public record, whether it was accurate or not.

12. In this case, Dr. Hatfill seeks to identify the confidential sources who provided information for use in three news stories published by Newsweek. As Washington Bureau Chief, I was involved in Newsweek's coverage of the anthrax attacks from the beginning, both as a supervisor of other reporters' work, and as a reporter in my own right. Mark Miller and I co-authored an article entitled, *The Hunt for the Anthrax Killer*, that was published in the August 12, 2002, edition of Newsweek.[1] *See* Exhibit H. The article described the animated response of FBI bloodhounds—which had first been presented with "scent packs" from the anthrax letters sent to Senators Tom Daschle and Patrick Leahy—upon arriving at Dr. Hatfill's apartment. The bloodhounds had similar reactions at two other locations known to have been frequented by Dr. Hatfill. As we explained in the article, the reaction of those bloodhounds figured prominently among the FBI's reasons for continuing to regard Dr. Hatfill as a "person of interest" to the investigation.[2] The information contained in that article came from interviews with knowledgeable persons who insisted on complete anonymity. Had we not agreed to that condition, we could not have written the article. I believe that the public interest was served by my having made that promise and disclosed to the public the progress that the FBI believed it was making towards solving this notorious crime.

---

[1] Mr. Miller is no longer a Newsweek employee, but Dr. Hatfill's subpoena to Newsweek does make reference to an article written by Mr. Miller and published on the Internet on August 12, 2002. Mr. Miller relied on confidential sources for that article, a copy of which is attached hereto as Exhibit I.

[2] Attorney General John Ashcroft publicly identified Dr. Hatfill as a "person of interest" in the investigation on August 6, 2002.

13. In its May 26, 2003, edition, Newsweek published an additional article mentioning Dr. Hatfill, this time co-authored by Michael Isikoff and me. *See* Exhibit J. Entitled *Finally the FBI Uncovers A Tantalizing Clue*, that article reported that, acting on a tip, FBI divers had recovered a plastic container from a Maryland pond, and that some investigators believed it could have been used in the anthrax attacks. While that information had previously been reported by the Washington Post, among others, it was supplemented by information provided by confidential sources who told us that some investigators were taking the theory seriously, but others had dismissed it as fantasy. On the basis of other information obtained from confidential sources, we were able to report that the investigators were first led to the Maryland pond by a tip given by a friend of Dr. Hatfill's. According to our sources, that friend told the FBI about a conversation in which Dr. Hatfill suggested that the anthrax could have been made in the woods and the evidence tossed "in a lake." These reports added significant dimensions to the public's understanding of the anthrax investigation. But for our promises of confidentiality, that information could not have been uncovered and reported.

14. If Newsweek or I were to identify the confidential sources for Newsweek's reporting on the anthrax investigation, that would be in violation of firm commitments to those sources, without which the information would not have been provided. If Newsweek or I were to breach the commitments that were made to those sources, even under Court order, our ability to report effectively on matters of legitimate public interest would be seriously undermined.

15. For those reasons and others, more fully explained in the legal memorandum submitted on Newsweek's behalf, I respectfully request that the Court quash Dr. Hatfill's subpoena to Newsweek.

I declare under the penalty of perjury, this 28th day of January, 2005 that the foregoing is true and correct.

/s/
Daniel Klaidman

B59

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN J. HATFILL, M.D.,	)	
	)	
Plaintiff,	)	Case No.
	)	1:03-CV-01793
	)	(RBW)
	)	
	)	
ATTORNEY GENERAL	)	
JOHN ASHCROFT, et al.,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF ALLAN LENGEL

I, Alan Lengel, hereby declare under the penalty of perjury as follows:

1. I am a staff writer for The Washington Post. Since October 2001, I have authored or co-authored a number of news articles reporting on the anthrax attacks, their aftermath, and the ensuing criminal investigation. Several of those articles concerned Dr. Steven Hatfill, whom the Attorney General has described as a "person of interest" in the investigation. I submit this declaration in support of The Washington Post's motion to quash Dr. Hatfill's subpoena, which evidently seeks to identify confidential sources who provided information to The Post concerning him. A copy of the subpoena is attached hereto as Exhibit A.

2. I have worked almost continuously as a journalist since 1977 for, among others, The Oregonian, The Detroit

News and, since March 1997, The Washington Post. During that time, I have also written freelance articles for The New York Times and Bloomberg News. I have also worked as a freelance reporter for Newsweek.

3. In my reporting for The Washington Post and other news organizations, I have sometimes found it necessary to rely upon information provided by confidential sources—individuals who agreed to speak with me only after being assured that their identities would not be revealed. In general, those individuals were providing information about activities within government that they believed the public had a right to know. Sometimes that information provided evidence of wrongdoing; sometimes it revealed facts that were embarrassing to those in power; and sometimes it provided insights into how governmental decisions were made or how current events affected the public interest. In all of these cases, factual information that I believed was of vital interest to the public would not have been published if I had not promised to maintain the confidentiality of those individuals who were in a position to disclose it.

4. Since February 2001, I have been writing articles about federal and local law enforcement in the Washington metropolitan area. In my current reporting on local law enforcement, I rely constantly upon factual information and observations provided by law enforcement sources who will speak only upon the condition of complete anonymity. If I were to breach a promise of confidentiality to any of my confidential sources, or if in the future I were unable to assure anonymity to sources, I would essentially be unable to cover these areas accurately and effectively. Knowledgeable individuals would either not discuss matters or would only say what is already on the public record, whether it was accurate or not.

5. In this case, Stevens Hatfill is seeking "information obtained regarding governmental investigation of whether Steven J. Hatfill, M.D. had any connection with the 2001 mailings of anthrax through the U.S. mail," including information contained in four articles that I wrote or co-authored. Dr. Hatfill is apparently seeking, among other things, to identify the confidential sources who provided information for these articles.

6. On January 25, 2003, The Post published an article that I wrote entitled "Hunt for Clues in Anthrax Case Revived: FBI Agents Return to Frederick Forest in Search Reportedly Linked to Scientist." See Exhibit B. The article reported that "[t]he FBI has again returned to a forested area in Frederick to search for clues in the anthrax killings case." The article further reported that the search was tied to Steven Hatfill, and that it was "triggered by a hypothetical statement Hatfill had made about anthrax." I believe the public interest was served by the publication of this article. It would have been impossible for me to collect and report the information contained in this article if I had not promised anonymity to my sources.

7. On August 1, 20003, The Post published an article that I wrote with Washington Post staff writer Guy Gugliotta entitled, "Md. Pond Produces No Anthrax Microbes; FBI Sought Clues in Deadly Attacks." See Exhibit C. The article reported that "lab tests of soil samples taken from a Frederick pond that the FBI drained in June showed no traces of anthrax bacteria." The article was based in large part on interviews with individuals who insisted on anonymity. Again, the public interest was served, I believe, by the publication of this article, and it would have been impossible for me to write the article if I had not promised anonymity to important sources.

8. On March 30, 2004, The Post published an article that Carol Leonnig and I wrote entitled "Judge Delays Lawsuit To

Help Anthrax Probe." See Exhibit D. The article reported that "[I]nvestigators have narrowed the likely source [of the anthrax] to a short list of labs, including Fort Detrick, the Dugway Proving Ground in Utah, and Louisiana State University." It also reported that "Hatfill continues to be a key focus of the probe," but that some law enforcement sources "doubt that the team of 25 agents and 12 postal inspectors will find the evidence to make the case against anyone." This information was provided by confidential sources, and it was in the public interest, I believe, for this information to be known.

9. On July 18, 2004, The Post published an article that I wrote entitled "Anthrax Probers Still Seek Md. Leads; Investigators Keep Returning to Frederick." See Exhibit E. The article provided an update on the anthrax investigation and its continuing focus at least in part on the Frederick area. It was based in part on information obtained from confidential sources. I believe that this article, too, was in the public interest. Much of it could not have been written if I had not assured anonymity to my sources.

10. In addition to the articles discussed above, Dr. Hatfill's subpoena makes reference to three other Post articles: (a) an article, dated May 11, 2003, by Marilyn Thompson[1] and entitled *New Find Reignites Anthrax Probe* (Exhibit F); (b) an article, dated June 10, 2003, by David Snyder and Marilyn Thompson and entitled *Md. Pond Drained for Clues in Anthrax Probe* (Exhibit G); and (c) an article, dated September 14, 2003, by Marilyn Thompson and entitled *The Pursuit of Steven Hatfill* (Exhibit H). I contributed to each of these articles, and I understand that they were based in part on information provided by confidential sources.

---

[1] Marilyn Thompson is no longer a Post employee.

11. If The Post or I were to identify the confidential sources for The Post's reporting on the anthrax investigation, that would be in violation of firm commitments to those sources, without which the information would not have been provided. If The Post or I were to breach the commitments that were made to those sources, even under Court order, our ability to report effectively on matters of legitimate public interest would be seriously undermined.

12. For these reasons, more fully explained in the legal memorandum submitted on The Post's behalf, I respectfully request that the Court grant The Post's motion to quash.

I declare under the penalty of perjury, this 27th day of January 2005, that the foregoing is true and correct.

/s/
Allan Lengel